The Solicitors' Journal

Vol. 93 July 30, 1949 No. 31

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CURRENT TOPICS

Their Majesties at the Temple

A SPECIAL honour was accorded by Their Majesties the KING and QUEEN to the legal profession when, as Treasurers of the Inner Temple and Middle Temple respectively, they presided at a joint Bench dinner at the Middle Temple Hall. Their Majesties were received by the Deputy Treasurers, LORD MERRIMAN for the Inner Temple, and Sir HENRY MCGEAGH, K.C., for the Middle Temple. The Lord Chancellor and Lords of Appeal, ex-Lord Chancellors, judges and other luminaries of the Benches of the two Inns combined to give Their Majesties a great welcome. After the dinner Their Majesties opened the chest in which lay the Royal Charter of Incorporation of the two Societies of Inner Temple and Middle Temple, and inspected it. They then signed a memorandum commemorating the present historic occasion. The celebration follows close on the opening of the new Middle Temple Hall by the Queen and the opening by the King of the extension to Middle Temple Library on 13th July.

Restraints on Anticipation

A CONTROVERSY among solicitors has been commenced in *The Times* correspondence columns following the Committee Stage of the Married Women (Restraint upon Anticipation) Bill in the Lords on 14th July. Messrs. Maples, Teesdale and Company, in *The Times* of 19th July, said that in pre-1935 settlements protection "is to be swept away at a stroke, regardless of the merits of each case," and they suggested that "this action may well be too drastic . . . the wiser plan would seem to be to enlarge the power of the court for that purpose, even to the extent of lifting the restraint altogether in a proper case." Messrs. Haslewood, Hare and Company in *The Times* of 22nd July wrote that Messrs. Maples, Teesdale and Company seemed to think that the settlors they referred to would have imposed restraints on anticipation even if they had foreseen the conditions which govern our financial arrangements to-day. They wrote: "In present circumstances the restraint is an anachronism which needs to be removed." In the same issue Sir LESLIE FARRER said that it would be interesting to know what proportion of restraints were imposed directly for the wife's protection and what proportion may have crept in from books of precedents. He suggested that a settlor who really wanted to "protect" the wife would adopt some more permanent method, e.g., by giving her a protected life interest. He also thought the restraint to be an anachronism. In reply Messrs. Maples, Teesdale and Company in *The Times* of 25th July said that it must be assumed that a settlor has had explained to him by a solicitor the effect of what he is doing. In a letter at p. 495 of this issue Messrs. Hicks, Arnold and Company take the view that, while the restraint is an anachronism, it is undesirable for existing settlements to be interfered with. None are better able to judge on this matter than solicitors, and if there is a substantial divergence of opinion, we submit that it should be resolved in favour of a court arbitrament rather than total abolition.

Limitation of Actions

THE report of the committee presided over by LORD JUSTICE TUCKER on the limitation of actions has now been published (Cmd. 7740, price 4d.) and, as was to be expected, recommends the repeal in its entirety of the Public Authorities Protection Act, 1893, as amended. The fine distinctions drawn by the cases between different authorities (see *Compton* v. *West Ham County Borough Council* [1939] Ch. 771), the difficulties arising when contribution is in question between joint tortfeasors, one of which is a public authority (*Merlihan* v. *A. C. Pope, Ltd., and J. W. Hibbert* (1945), 89 SOL. J. 359), the fact that local authorities have no discretion to plead the Act, and the great extension of the scope of public authorities' statutory activities, are among many reasons cited by the committee for the proposed repeal. Other recommendations are that two years should be the period of limitation for actions in respect of personal injuries, but that leave should be obtainable from the court in its discretion to sue within six years; that the period for other actions based on contract and tort should remain at six years; that the periods in respect of actions against the Crown and public corporations set up by nationalisation and similar Acts should be the same as those applying to other public authorities and private individuals; and that the periods for actions under the Fatal Accidents Act, 1846, and s. 1 (3) of the Law Reform (Miscellaneous Provisions) Act, 1934, should be two years from the date of death, subject to a right by defendants to apply for an extension up to six years from the date of the cause of action. No further alterations in the periods prescribed by ss. 2 and 3 of the Limitation Act, 1939, are recommended.

Transfer and Apportionment of Property

THE attention of solicitors is drawn to a detailed typescript memorandum (B.G. (49) 79) issued by the Ministry of Health as a result of a number of inquiries about the apportionment

of property which is used partly for hospital and partly for other than hospital purposes, and the transfer of securities to Boards of Governors. The memorandum explains the procedure to be carried out in apportioning property and transferring securities. The instructions are full and contain a useful appendix of notes on the completion of transfer certificates and forms of certificates.

The Bentham Committee

THE chairman of the Bentham Committee, Mr. A. L. SAMUELL, in a statement at the annual meeting on 20th July, said that they had started the year with a loan of £100 and an overdraft of nearly £50. Their indebtedness to the treasurer went up to £250 during the year and the year ended with a debt to him of £100. That debt has now been repaid by a guaranteed overdraft at the bank. The annual deficit is about £200. It was thought that the new legal aid scheme would come into operation on 1st January, 1950. Now it was not expected to be working until the summer of 1950. The chairman said that the committee would attain its majority and die young and, he hoped, respected. The chairman need have no fears for the respect in which the committee will be held. It will die in honourable harness, and its record of unpaid and self-sacrificing effort will long be remembered with gratitude. During the year under review in the twentieth annual report, over 18,000 applications for assistance were dealt with by the poor man's lawyer centres affiliated to the committee, and 416 cases were referred to the Bentham Committee for assistance. Of these, 112 proceedings were successful or successfully settled, and 118 applicants were advised generally. Fifty-nine applicants were referred to The Law Society's Poor Persons Committee and other organisations. The committee states that it relies on its old friends to continue their financial support, and would be grateful for donations to tide it over the next year or so.

Rents of Business Premises

MR. EDMUND HOWARD, chairman and managing director of the City of London Real Property Company, Ltd., has described the tribunal recently proposed by the Leasehold Committee on Tenure and Rent of Business Premises as "the most monstrous tribunal ever to be appointed." At the annual general meeting of that company on 18th July he said: "It is proposed, subject to an Act of Parliament, that a tribunal be set up which will have power, on appeal, to assess the rent at which a lease will be renewed .... It will be a tribunal which will have power to decrease rents when they are above a fair market value, but when the market changes and rents are on a scale too low to show an economic return to the landlord they will have no power to raise them." Solicitors who have searched for office accommodation on account of either a notice of increase of rent at the termination of their tenancies, or commencement of practice, will view this statement with some scepticism. At the rate at which we are rebuilding and can afford to rebuild business premises, it will be a long time before "the market changes and rents are on a scale too low to show an economic return." The period between 1922 and 1939 to which Mr. Howard referred as one in which "variation took place frequently" was not one in which colossal devastation had to be made good.

Ex Officio Justices

SIR LEO PAGE has again made a valuable point in a letter to *The Times* (23rd July) arising out of the Justices of the Peace Bill. It makes no provision, he wrote, to carry out the recommendation of the Royal Commission that chairmen of urban and rural district councils should cease to be justices *ex officio*. He described the appointment as automatic, and said that no question of suitability arose. Some such *ex officio* magistrates were quite unfitted to sit. When benches commonly consisted of seven or more justices a bad appointment was unfortunate, but now that they were likely to be reduced to three or four, it was mischievous. Moreover, these *ex officio* justices normally held office for only one, or sometimes two years, so that they rarely became even technically efficient. With regard to the commissions of small boroughs Sir Leo wrote: "It is not that one loves tradition less, but that one loves justice more."

Legal Education

IN his presidential address at the annual meeting of the Society of Public Teachers of Law at Nottingham on 15th July, Professor D. HUGHES PARRY said that in two years' time a new system of school examinations would be in being. The universities had agreed to accept a more or less uniform maximum qualification for entrance. It was hoped that the Council of Legal Education and The Law Society would find it possible to accept a similar qualification. It would involve some raising of the standard of general education for entry into the professions. Teachers of law in Canada and the U.S.A. were carrying on live discussions in conferences and legal periodicals regarding education for professional responsibility. They seemed to agree that law-school education should aim at developing "the attitude of public responsibility in the young lawyer." We in Britain seemed to take these matters more for granted and to rely for results upon a system of liberal education and long established professional traditions. The question was, could we continue to do so in the changed social and economic conditions of our time? As the Atkin Report indicated: "Though it may be impossible to insist upon graduation at a University as a necessary qualification for admission to the legal profession, there can be little doubt that it is to the advantage of the professions that as many members as possible should have had the benefit of the more extended education connoted by the degree."

Recent Decisions

In *In re Northover*, on 20th July, PILCHER, J., held that a wife's will should be admitted to probate without three lines which the testatrix had added after executing the will.

In *Wheatley* v. *Wheatley*, on 20th July (*The Times*, 21st July), a Divisional Court (the LORD CHIEF JUSTICE and OLIVER and STABLE, JJ.) held that while a wife lived in the same house as her husband, sharing the kitchen, but for most practical purposes in a separate household, she could not enforce any maintenance order against him, because she "resided" with him within s. 1 (4) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, and that under that section the order would cease to have effect if she continued to reside with him for three months after the order was made.

In *Langford Property Company, Ltd.* v. *Batten*, on 21st July (*The Times*, 22nd July), the Court of Appeal (BUCKNILL, COHEN and ASQUITH, L.JJ.), held that a flat which had been let without a garage at a rental of £135 a year on 1st September, 1939, was the same flat as that let with the garage subsequently at a rent of £175 for two years and £185 for the third year, and therefore the standard rent of the flat with the garage was not £185 but £135. Leave was given to appeal to the House of Lords.

In *Garsberg* v. *Storr*, on 18th July (*The Times*, 19th July), the Court of Appeal (BUCKNILL, COHEN and ASQUITH, L.JJ.) held that where a husband who was paying £2 10s. a week under a separation agreement undertook, after service of a divorce petition upon him, but before a decree *nisi* was granted to his wife, to pay to his wife "£3 a week alimony" as from the date of the decree *nisi*, the undertaking was not supported by consideration and was *nudum pactum* not enforceable at law. Furthermore, the word "alimony" was never used in the divorce court to cover payments by a husband to a wife after a decree absolute had been pronounced and the undertaking therefore only covered the period from decree *nisi* to decree absolute.

LOCAL LAND CHARGES—II

In the first part of this article we considered the first two heads of the terms of reference of the departmental committee on local land charges (*ante*, p. 475). The third head remains, namely, to consider whether—

(*a*) prospective vendors should be obliged to disclose any of the matters referred to in the first two heads to their prospective purchasers;

(*b*) any steps should be taken to ensure prompt registration of all matters compulsorily registrable in the registers of local land charges.

Under the present law, on a sale of land, the vendor is under a duty to disclose to the purchaser any material defect in his title and any *latent* defect in the quality of the land sold which will materially interfere with enjoyment of the land for the purpose for which it was sold. Some matters which are at present registrable as local land charges may fall within the scope of this duty, e.g., charges for expenses of various kinds and rights relating to the maintenance of oil pipe lines under the Requisitioned Land and War Works Act, 1948. But this duty has been seriously modified as a result of the well-known case of *Re Forsey and Hollebone's Contract* [1927] 2 Ch. 379. In this case, Eve, J., held that if a resolution to prepare a planning scheme under the Town Planning Act, 1925, was an incumbrance (and he held that it was not) the purchaser must, under s. 198 of the Law of Property Act, 1925, be deemed to have contracted with actual notice of it in consequence of its registration as a local land charge. On appeal the Court of Appeal confirmed the decision of Eve, J., that the resolution was not an incumbrance and his interpretation of the effect of s. 198 of the 1925 Act was, therefore, not a necessary part of his judgment; in practice, however, it has generally been regarded as correct.

Section 198 provides that registration of any matter required or authorised to be registered under the provisions of the Land Charges Act, 1925, in any register shall be deemed to constitute actual notice for all purposes connected with the land affected. This wording would catch not only local land charges proper but also those various matters referred to in the first part of this article which are required by statutory provisions to be registered in the register of local land charges. Accordingly a vendor is, in effect, relieved of any duty he may be under to disclose a matter which is properly registered in a local land charges register, though the purchaser can call upon the vendor to remove an incumbrance, if it is removable. Many local land charges, however, are not removable.

As regards matters which are not at present registrable, most of these will not fall within the scope of the vendor's duty to disclose; they will constitute neither defects in title nor latent defects in quality.

The general effect then of the present law seems to be that the vendor is under no obligation to disclose registrable matters or matters of a like kind which are not registrable, and that his only obligation is to remove an incumbrance which is removable and to which the sale has not been made subject. This statement assumes that there has been no misrepresentation by the vendor, for in that case the circumstances are different.

Under the National Conditions of Sale (15th ed.) a vendor indemnifies a purchaser in respect of any money payable under a local land charge before the date of the contract. Otherwise these, together with any such charge registered after the date of the contract, fall on the purchaser (Cond. 15). Condition 20 of the Law Society's Conditions, 1934, contains provisions similar in principle, with additional provisions as to certain orders under the Housing Acts.

How far should the vendor be placed under a duty to disclose?

While s. 198 of the 1925 Act remains law, a solicitor acting for a prospective purchaser will search in the appropriate registers and make the approved additional inquiries, and to place an obligation to disclose on the vendor would do little to help such a purchaser, except to cover him in respect of any incorrect replies to the additional inquiries. Many purchasers, however, enter into contracts without the advice of solicitors, and these purchasers at present receive scant protection.

If matters at present not registrable are made registrable on the lines indicated in the first part of this article it would seem easy to place a statutory obligation on prospective vendors to disclose any matters registered before the date of the contract, coupled with a suitable amendment of s. 198 of the 1925 Act, to avoid the effect which this section would have in reducing the effect of the obligation. For failure to disclose the purchaser would have a right to rescind or to damages by way of compensation according to the effect on the property of the matter not disclosed; in some cases a purchaser might well be required to complete without compensation if the matter not disclosed has no appreciable effect on the value of the property, e.g., an order under s. 29 of the Civil Aviation Act, 1946, authorising a direction to be made imposing restrictions on the heights of buildings.

It must, however, be realised that there may be some charges and, if the proposals suggested in the first part of this article were put into force, there would be many more, of which a vendor might himself be ignorant unless he searched before signing the contract, and the imposition of an obligation to disclose would make such a search by the vendor important in practice.

The unfortunate result which s. 198 of the 1925 Act may have for a purchaser who enters into a contract without searching in the local land charges register has already been indicated. How much more unsatisfactory is the operation of this section in the case of charges registered in H.M. Land Charges Register? The Council of The Law Society have given it as their opinion (*Law Society's Gazette*, 1947, p. 97) that, having regard to the decision in *Re Forsey and Hollebone*, search should be made before contract for local land charges, and for other land charges in the names of persons who, to the knowledge of the purchaser or his solicitor, gained in that transaction, are, or have been at any time since 1925, estate owners of the property. But s. 198 would operate to give notice of any land charge in the central register, though a purchaser could not in fact search for all of them because he will normally only know the name of his prospective vendor. This highly unsatisfactory position results from the practice of registration against estate owners and not against properties. As a result of the same practice it is, strictly speaking, necessary before completion to search against all who have been estate owners since 1925, unless the vendor can produce certificates of search against the earlier owners. With the passage of time, titles will not be abstracted back in many cases to this year and again a purchaser is placed in an unsatisfactory position.

An amendment of s. 198 has already been suggested earlier in this article, but this would not provide a complete remedy. Land charges are registered to protect the persons entitled to their benefit as well as to provide an easy system of finding out their existence. It seems to the writer, therefore, that s. 198 must remain in existence and that the suitable amendment referred to should only extend to ensuring that a vendor should not be entitled to escape from an obligation to disclose simply by reason of the fact that his prospective purchaser is deemed to have notice under this section.

The real remedy for the unsatisfactory position referred to is the system of registration against properties and not names.

Admittedly only local land charges fall within the scope of the departmental committee, but, if amending legislation is required, why should not the opportunity be taken to abolish the present unsatisfactory system? The reason for not registering against properties in the central register is, no doubt, principally the lack of up-to-date ordnance survey maps. To the writer this seems no longer a valid reason. It is true that the official survey maps are still

mostly out of date, but local planning authorities are themselves having to bring their own maps up to date for the purpose of their survey and development plan; this task, which is really that of the Ordnance Survey, has already formed the subject of complaint and requests from the authorities for financial assistance from the Government. Moreover, all new development will have to be plotted on the local authorities' maps, as they must keep their index maps to the register of planning applications up to date. Why, therefore, should the next logical step not be taken of having all charges registered in the local registers, where up-to-date maps will before long be available and the registers can be worked by officers having adequate local knowledge? One search against one property will then eventually suffice to disclose all charges against that property. It will avoid the awkward disclosure just before completion of "the following entries which may or may not affect the property" and a hurried rush to Kidbrooke. It should also result in an economy in time and manpower, both in solicitors' offices and, after a transitional period, in the registries.

The final head of the departmental committee's terms of reference deals with steps to ensure the prompt registration of all matters compulsorily registrable in the local registers. This has already been briefly referred to in the first part of this article. If, as seems must be the case whatever scheme is adopted for the future, many, if not all, local land charges are not to be void if unregistered, the necessity of ensuring prompt registration becomes of paramount importance. It is suggested that it should be made a statutory duty of the body for whose benefit any registrable matter will arise to register a priority notice in respect of that matter a fixed number of days (to correspond with the period for which an official certificate will give protection) before the matter in fact arises and thereafter to register the matter itself within a further fixed period. If this is to work satisfactorily it seems inevitable that the present fourteen-day period will have to be reduced. Any person prejudiced by a failure in such statutory duty would have an action for damages against the body concerned.

It would also seem not unreasonable that any new rules should fix a maximum period within which a certificate of official search should be issued after receipt of a properly completed requisition.

R. N. D. H.

THE NEW PROBATION PROVISIONS

On 1st August next the sections of the Criminal Justice Act, 1948, relating to probation and absolute and conditional discharge of offenders will come into operation (S.I. 1949 No. 1045: Criminal Justice Act, 1948 (Date of Commencement) (No. 3) Order, 1949, dated 31st May, 1949). The Probation of Offenders Act, 1907, and its amendments are repealed on that date and the probation machinery will be governed by ss. 3 to 12, 45 to 47 and Scheds. I and V of the Act of 1948, together with the Probation Rules, 1949 (S.I. 1949 No. 1328).

One change in the system has been the subject of not a little discussion and there is undoubtedly a conflict as to the wisdom of it. This is, of course, the requirement that a court of summary jurisdiction shall proceed to a conviction before exercising its power of making a probation order or of granting an absolute or conditional discharge (s. 3 (1) and s. 7 (1)). The distinction made in the Act of 1907 between summary trial and trial on indictment in this respect is removed. In all cases the probation and discharge powers are given by the Act of 1948 to "a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) . . ." On the whole the change is thought to be a salutary one. There has existed in the past a far too frequent confusion in the minds of laymen, and even of lay justices, between the simple dismissal of a charge which has not been proved to the satisfaction of the court and the dismissal, under the Act of 1907, of a proved offence. A confusion which could produce such differing attitudes as "It was doubtful whether he did it or not, so they dismissed it under the Probation of Offenders Act" or "Of course he did it, but they *let him off* under the Act," was a dangerous confusion and one ripe for removal. Moreover, any tendency to regard the making of a probation order as a "letting off" is surely undesirable. Now the offender will clearly stand convicted, although under s. 12 a conviction followed by a probation order or an order for absolute or conditional discharge will not, unless he is subsequently brought up and sentenced, be deemed to be a conviction against the offender for other purposes.

Another interesting change in the provisions is at first sight one of form rather than substance, but it serves a useful purpose in clarifying the alternatives open to a court and in stressing the importance of the probation order in the strict sense and as distinct from the order for discharge. Under the Act of 1907 the powers of the court were somewhat clumsily set out in a "rolled up" s. 1. Now they are separated. Under s. 3 (1) the court may make a probation order requiring the offender to be under the supervision of a probation officer for a specified period of not less than one year nor more than three years. Under s. 7 (1), if the court is of opinion that it is inexpedient to inflict punishment and that a probation order is not appropriate, it may make an order discharging the offender absolutely or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, as may be specified therein. The probation order, with its element of supervision, is the first alternative to sentence; if this is not appropriate then absolute or conditional discharge may be used.

Under the Act of 1907 the court was required to have regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed. This formula was a clumsy and confusing one and it has been replaced in the Act of 1948 by the simple and general phrase "having regard to the circumstances, including the nature of the offence and the character of the offender." Probation orders requiring treatment for mental condition are separately dealt with under s. 4.

It will be noted that for the probation order a *minimum* period of one year is introduced by the new Act, which retains the old maximum of three years. The formal recognisance by the offender is dispensed with, but before making a probation order the court must explain to the offender in ordinary language the effect of the order and that if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence. Further, if the offender is not less than fourteen years of age the court must not make the order unless he expresses his willingness to comply with the requirements thereof (s. 3 (5)).

Section 3 (4) provides that a probation order may include requirements relating to the residence of the offender, after proper consideration by the court of the home surroundings of the offender. Accommodation is to be provided for the reception of such offenders under s. 46, and will consist of "approved probation hostels" for those who are to reside therein but be employed outside the premises and "approved probation homes" for other cases.

Discharge, amendment and review of probation orders are covered by s. 5 and Sched. I.

Section 11 (2) empowers the court, without prejudice to its power of awarding costs, to order the offender to pay reasonable damages for injury or compensation for loss with a limit, in the case of an order by a court of summary jurisdiction, of *one hundred pounds*.

Schedule V and the new Probation Rules contain administrative provisions as to probation areas, probation committees,

case committees and probation officers. The success or failure of any system of probation must depend on the manner in which the duties of the committees and, above all, of the probation officers are carried out. Their task is a difficult one and the qualities essential in those to be selected are, perhaps, not too common in these days of strain, worry and wear and tear, but the operation of the new provisions may well be a signal for encouragement and enthusiasm to some and a reminder to others that much of the recent talk of greater deterrence and more repressive measures is loose talk indeed.

O.

Company Law and Practice

THE PROFITS TAX IN RELATION TO BONUS ISSUES

IT is generally accepted that a straightforward issue of bonus shares by a company which is not a director-controlled company is not to be regarded as being a distribution to proprietors within the meaning of Pt. IV of the Finance Act, 1947, and does not have the effect of reducing profits tax reliefs for non-distribution or of giving rise to profits tax distribution charges. Nevertheless some practitioners doubt whether this is the case as a matter of law, as distinct from Inland Revenue practice, and for this reason the subject is worthy of examination.

The profits tax has its origin in National Defence Contribution, which was introduced in 1937 in anticipation of war. During the war N.D.C. was not of major importance as compared with excess profits tax; but, in order to cover cases where by reason of high pre-war profits businesses escaped E.P.T. or were liable for less than the amount of N.D.C. assessable, N.D.C. continued to be exigible where it exceeded E.P.T. The rate of N.D.C. remained unchanged throughout the war so that, as compared with E.P.T., its relative importance declined. When E.P.T. was abolished the new description of the profits tax was given to N.D.C. (the name being no longer appropriate), the rate was raised to 12½ per cent. (subsequently doubled with retrospective effect) and an attempt was made to discourage over-distribution of profits by according relief of 7½ per cent. (also doubled) in respect of undistributed profits. The discrimination in favour of undistributed profits is, of course, contrary to past fiscal policy and in particular to the principle underlying s. 21 of the Finance Act, 1922.

The machinery for relief in respect of undistributed profits is based on s. 30 of the Finance Act, 1947. Section 30 (2) provides that, if the net relevant distributions to proprietors for any chargeable accounting period are less than the profits for that period chargeable to the profits tax, the amount chargeable by way of the profits tax in respect of that period shall be reduced by an amount equal to 7½ per cent. of the difference. Section 30 (3) covers the position where the net relevant distributions exceed the profits by providing for a distribution charge of 7½ per cent. on the excess, subject to the proviso that the total amount in respect of which distribution charges are to be or have been levied shall not exceed the total amount in respect of which reliefs for non-distribution have been made; the proviso is necessary to prevent the profits tax being charged at the higher rate on a greater amount of profits than the total earned, so far as the period since 1st January, 1947 (the date from which the rate was increased and relief for non-distribution introduced), is concerned.

In order to ascertain whether or not a straightforward bonus issue of shares by way of capitalisation of profits can affect profits tax liability it is necessary to see whether the issue of bonus shares is in such a case a "relevant distribution." The substantive part of the definition of this phrase is to be found in s. 35 (1) and s. 36 (1) of the Finance Act, 1947; these subsections read as follows:—

> "35.—(1) Subject to the provisions of this and the two next succeeding sections, the gross relevant distributions to proprietors for any chargeable accounting period of a body corporate, society or other body, are the total distributions to the members of the body corporate, society or other body, not being distributions allowable as deductions in computing the profits of the trade or business for any period for the purposes of the profits tax, and being either—
>
> (*a*) dividends declared not later than six months after the end of that period which are expressed to be paid in respect of that period or any part thereof; or
>
> (*b*) distributions (other than dividends which, under paragraph (*a*) of this subsection, are to be treated as part of the gross relevant distributions to proprietors for any previous chargeable accounting period) made in the period; or
>
> (*c*) in the case of the last chargeable accounting period in which the trade or business is carried on, so much of any distribution made after the end of that period (not being a distribution to which paragraph (*a*) of this subsection applies) as is not a distribution of capital,
>
> and, for the purposes of paragraph (*c*) of this subsection the distributions which are to be treated as distributions of capital shall not, in the case of distributions made by a body corporate with a share capital, exceed an amount equal to the total nominal amount of the paid-up share capital thereof together, where the body corporate has issued shares at a premium for cash, with the aggregate of the amounts of the premiums.
>
> * * * * *
>
> 36.—(1) Subject to the provisions of the next succeeding subsection, wherever—
>
> (*a*) any amount is distributed directly or indirectly by way of dividend or cash bonus to any person; or
>
> (*b*) assets are distributed in kind to any person; or
>
> (*c*) where the trade or business is carried on by a body corporate the directors whereof have a controlling interest therein, an amount is applied, whether by way of remuneration, loans or otherwise, for the benefit of any person,
>
> there shall be deemed for the purposes of the last preceding section to be a distribution to that person of that amount or, as the case may be, of an amount equal to the value of those assets:
>
> Provided that no sum applied in repaying a loan or in reducing the share capital of the person carrying on the trade or business shall be treated as a distribution."

In the case of a company other than a director-controlled company, it is submitted that, for there to be a distribution to proprietors within the meaning of Pt. IV of the Act, there must be either a payment of cash or a release of assets by the company to its members. The basis for this submission is that s. 35 in its essence deals only with amount and can only relate to payments of cash, and that s. 36 (in its application to other than director-controlled companies) deals only with (*a*) direct or indirect payments of cash, and (*b*) distribution of assets in kind. The word "assets" in s. 36 (1) (*b*) must, it is considered, mean "assets of the trade or business."

If it is correct that a distribution within the meaning of Pt. IV of the Act must involve a payment of cash or a release of assets, it follows that a straightforward bonus issue of shares will not affect the profits tax position unless it can be shown that there has been a release of assets; on this point there is clear authority based on two separate decisions of the House of Lords for saying that a bonus issue does not involve a release of assets.

In *Inland Revenue Commissioners* v. *Blott* [1921] 2 A.C. 171 it was held that a bonus issue of shares was not to be regarded as income of the recipients, and as such to be taken into account for sur-tax (super-tax) purposes. *I.R.C.* v. *Blott* was decided by applying the well-known case of *Bouch* v. *Sproule* (1887), 12 App. Cas. 385, and the decision was not unanimous; but the case was followed by the House of Lords in *Inland Revenue Commissioners* v. *Fisher's Executors* [1926] A.C. 395. In *Pool* v. *Guardian Investment Trust Co.* [1922] 1 K.B. 347, Sankey, J., summarised the result of *Bouch* v. *Sproule* and *I.R.C.* v. *Blott* in the words: "In my view the true test as to whether a distribution of shares falls to be taxed depends upon two questions—

(1) whether there has been a release of assets;

(2) if so, whether the assets released were capital or income."

The decision in *I.R.C.* v. *Blott* was based upon a majority conclusion that there had been no release of assets (*per* Sankey, J., in *Pool* v. *Guardian Investment Trust Co.* [1922] 1 K.B., at p. 356). In *I.R.C.* v. *Fisher's Executors* this view was confirmed and it is worth quoting the following extract from the judgment of Viscount Cave, L.C.: "The whole transaction was 'bare machinery' for capitalising profits and involved no release of assets either as income or capital."

The effect of a bonus issue was well summarised by Viscount Finlay in *I.R.C.* v. *Blott* in the following words: "What might have been paid as income went to increase the capital of the company. The shareholder got his proportionate share in the business of the company as increased by the additional capital. The proportion of his share in the business as compared with the proportions of other shareholders was in no way affected by the issue of the . . . shares as all the shareholders alike got them. The benefit, and the sole benefit, which the respondent derived was that the business in which he had a share was a larger one with more capital embarked in it, precisely as might have been the case if the accumulated profits had been applied in the improvement of the company's works and machinery. . . ., the fund which might have been divided was impounded to increase the capital of the business. . . . The case differs *toto caelo* from a case in which a dividend is paid not in money, but in money's worth, by the delivery, say, of goods or of securities." One should perhaps add, as did Viscount Cave, L.C., in *I.R.C.* v. *Fisher's Executors*, that the securities referred to in the last sentence are, of course, securities forming part of the company's assets.

In conclusion, therefore, where a company (other than a director-controlled company) has issued bonus shares to its members by way of capitalisation of profits, it is submitted that—

(*a*) while bonus shares are, of course, assets in the hands of the members, these assets are not obtained as a result of the distribution by the company of any of its assets;

(*b*) on the basis of the cases quoted above, there has been no release of assets by the company;

(*c*) as there has been no release of assets by the company, it cannot be said that assets have been "distributed in kind" within the meaning of para. (*b*) of s. 36 (1);

(*d*) the bonus issue is not a relevant distribution within the meaning of Pt. IV of the Finance Act, 1947.

A bonus issue of debentures comes within the above reasoning (in *I.R.C.* v. *Fisher's Executors* a bonus issue of debentures was in question), and it would seem that the same conclusions should be reached, although the writer shares with Lord Sumner misgivings as to the effect of such a position in law. A perpetual debenture may differ little from share capital prior to liquidation, but a short-term debenture is a different thing. In effect all that happens, if a bonus issue of short-term debentures is made, is that a dividend is declared but payment postponed. So far as the sur-tax position is concerned, neither the debentures themselves nor the redemption moneys are treated as income liable to be taken into account, and, as Lord Sumner said: "How far this position is tolerable is . . . a matter for the Legislature". So far as the profits tax is concerned, may not the payment of the redemption moneys be treated as a distribution?—s. 36 (1) provides that no sum applied in repaying a loan shall be treated as a distribution, but it is at least arguable that there never has been a loan. In view of the possibility of such an argument being adduced by the Inland Revenue, it is suggested that a bonus issue of short-term debentures requires careful consideration and the guidance of counsel.

The capitalisation of profits and their application in the payment up of uncalled liability on existing shares seems to be entirely in the same category (so far as other than director-controlled companies are concerned) as the capitalisation of profits and their application in the payment up of unissued shares to be issued as fully paid bonus shares to members.

Throughout this article the case of a director-controlled company has been specifically excepted, since somewhat different considerations arise.

J. W. M.

A Conveyancer's Diary

TIME OF THE ESSENCE

THE equitable rule that time is not of the essence of a contract for the sale of land was doubtless intended to temper the injustices inseparable from the much more rigorous attitude of the common law in regard to the enforcement of stipulations as to time; but the rule itself would lead to intolerable inconvenience if it were not for the liberty of either party to the contract, where time is not originally of the essence of the contract, to make it so in any case of protracted delay by service of a notice upon the dilatory party, requiring him to do whatever it is that he has so far neglected to perform within a reasonable period. Failure to comply with such a notice has two consequences: in the first place, the party in default is thereafter debarred from the remedy of specific performance, and in the second place, he renders himself open to an action at law as a defaulter upon the contract; see *Stickney* v. *Keeble* [1915] A.C. 386, at p. 418. The first of these consequences is equivalent, as far as the party not in default is concerned (that is to say, in the normal way the party who has served the notice making time of the essence), to liberty to treat the contract as rescinded, and if no deposit has been paid that would be the end of the matter. But if a deposit has been paid, its recovery or forfeiture, as the case may be, then becomes the subject of proceedings at law, to which the party in default is then liable by reason of his failure to perform the contract in the manner required by the other party.

In the ordinary case it is the party who wishes to enforce the contract who serves the notice making time of the essence of the contract, and the only question which then arises is whether the party served with such a notice is bound to comply with it; this general question may then resolve itself into more particular inquiries, e.g., whether the time limited for compliance with the notice is in all the circumstances reasonable, or whether the party who has served the notice had himself, before the date of the service of the notice, disentitled himself to any form of relief (see *Stickney* v. *Keeble*, *supra*, *loc. cit.*). The converse of this case, that is to say, one which raises the problem whether the party who serves the notice is himself bound by it, must be very rare, and there appears to be no reported decision on the point before the recent decision in *Finkielkraut* v. *Monahan* (1949), 93 SOL. J. 433.

In this case the facts, so far as material, were as follows. In December, 1947, the vendor contracted to sell certain premises to the purchaser. There was delay in completion owing to the fact that the vendor had previously contracted to purchase property of which the premises which were the subject-matter of the present contract formed part from

one G, but G had died before completion and it was therefore impossible for the vendor to make title to the premises until after a grant of probate had been made in respect of G's estate. This apparently took some time, and then there was further delay, attributable in this instance to the purchaser, who found some difficulty in arranging a mortgage to provide part of the purchase price. On the 31st March, 1948, the vendor's solicitor served a notice on the purchaser requiring completion within fourteen days. This notice was, in fact, complied with by the purchaser's solicitor, who within the period of fourteen days limited by the notice (*a*) sent an engrossment of the proposed conveyance to the vendor's solicitor for execution by the vendor, (*b*) exchanged completion statements, and (*c*) attended on the last day of the period at the office of the vendor's solicitor with banker's drafts for the amount of the purchase price. But in the meantime certain errors had been discovered in the conveyance, as submitted by the purchaser, and G's executors (who were apparently to be parties thereto) would not approve it in the form in which it had been submitted to them. The vendor's solicitor was not, therefore, in a position to complete within the period that the vendor had himself specified as essential, and after some further correspondence the purchaser issued a writ for rescission of the contract and for return of his deposit. Shortly afterwards the vendor issued a writ in which he claimed specific performance of the contract. These actions were consolidated and heard together.

Judgment was given for the purchaser in both actions. Danckwerts, J., observed that the vendor could not be heard to say that time was not of the essence of the contract in this case in view of the notice that he himself had served; if the notice bound the person to whom it was given, then it also bound the person who gave it. The authority relied upon by the learned judge for the latter proposition included *Stickney* v. *Keeble, supra*, together with other cases. I do not think that the proposition is to be found in so many words in any of these decisions, but it is implicit in the principles on which equity has always approached this problem of time in relation to contracts for the sale of land. Thus, Lord Cairns in *Tilley* v. *Thomas* (1867), L.R. 3 Ch. 61, at p. 67, after observing that the construction of such a contract in equity must be the same as at law, said that equity would relieve if there was nothing in "the express stipulations between the parties, the nature of the property or the surrounding circumstances" which would make it inequitable to interfere with and modify the legal right. These words (which were based on earlier authority) were directed perhaps more to a case of default in completion on a day originally fixed by the contract, but the statement is general enough to be applicable to the events which happened in the case under review, where clearly the vendor's own notice would be one of the circumstances in the light of which his equity to specific performance must be considered. And in his celebrated speech in *Stickney* v. *Keeble, supra* (at p. 415), Lord Parker summarised the distinct views entertained on the subject by courts of law and of equity respectively in the following sentence: "Where [equity] could do so without injustice to the contracting parties it decreed specific performance notwithstanding failure to observe the time fixed by the contract for completion, and as an incident of specific performance relieved the party in default by restraining proceedings at law based on such failure." The important words in this passage are "without injustice to the contracting parties": justice can be done either by holding that both parties are bound by a notice making time of the essence, or that neither is bound. There is no middle course.

Certain other matters were dealt with in the judgment in this case, but they did not affect the determination on the main question of law, which was this: that a party who has made time of the essence of a contract for the sale of land is not entitled to the remedy of specific performance if he is unable to complete within the specified time. There is no reason to suppose that a case where time is originally made of the essence by agreement between both the parties would be decided on different principles from those applied in this case, where time was made of the essence by notice served at the instance of one of the parties only.

"A B C"

Landlord and Tenant Notebook

DAMAGES FOR FAILURE TO REINSTATE

WHEN reading the report of *James* v. *Hutton and J. Cook and Sons, Ltd.* [1949] W.N. 304 (C.A.), I was reminded of an octogenarian friend of mine who ascribes her excellent eyesight to never having had electric light in her house. If she were to let the said house to a tenant who covenanted not to make alterations without her consent, and consented to his replacing the gas-light apparatus by electric-light apparatus on condition that at the end of the lease he restored the *status quo ante*, would she be entitled to damages if he broke that undertaking?

The facts of the recent case, as far as relevant to such a question, were that a shop was let for a term of twenty-one years from a date in 1934, the lessee covenanting not to make or permit to be made any substantial deviation or alteration to the premises without the consent and approval of the lessor and superior lessor; that the day after the execution of the lease a licence was granted to the tenant to effect a material alteration, namely, the replacing of the existing shop front by a new one, provided that the tenant should, at the expiration or sooner determination of the lease, reimburse the lessor the cost of reinstatement and making good, but his liability not to be greater than the cost of reinstatement actually carried out by the lessor; that in 1936 the lessee assigned to a company who were soon granted an additional licence to execute further alterations of the same kind, they covenanting to restore the premises, at the expiration, etc., of the lease, either to the same state as they were in before the additional licence was granted or, at the lessor's option, to the state they had been in before the original licence was granted "and as if the several works and alterations thereby or by the principal licence authorised had not been made." This second licence was expressed to be in addition to, but not in substitution for, the principal licence, the covenants and conditions of which were to remain in full force and effect; but it looks as if the provision limiting liability to the cost of what was actually carried out was not considered part of the bargain. At all events, the company, having spent £3,300 in effecting alterations completed by February, 1940, failed to respond to a 1946 notice to restore the premises to the pre-1934 state, and in 1947 the lessor issued a writ claiming damages against the original tenant and the company for breach of covenant so to restore. The question referred to an Official Referee was to consider the covenant contained in the second licence; his honour found that the cost of restoration would be some £4,300 and, there being nothing in the Landlord and Tenant Act, 1927, applicable to the case, held that the plaintiff was entitled to this sum under the common law. The evidence had shown that the plaintiff would not restore the premises (what the superior landlord thought about it did not appear), that it was unlikely that the new shop front would be replaced, that some people might prefer the old one but not that the premises were adversely affected or made less valuable by the alteration. And the Court of Appeal held that all the plaintiff was entitled to recover was a nominal amount (which they assessed at £1).

It may be convenient to deal first with the applicability of the Landlord and Tenant Act, 1927. Section 18 (1) says: "Damages for a breach of a covenant . . . to keep or put premises in repair during the currency of a lease, or to leave

or put premises in repair at the termination of a lease . . . shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is diminished owing to the breach of such covenant . . ." The Official Referee considered that this did not apply, presumably because the covenant was not a covenant to leave or put in repair. The Court of Appeal did not deal with the point, consideration of which was unnecessary having regard to its view of the position at common law. But, whether one favours an objective test based on *Lurcott* v. *Wakely and Wheeler* [1911] 1 K.B. 905 (C.A.), in which "repair" was considered to mean renewal or replacement of what has decayed or collapsed, or prefers the more teleological approach of *Bishop* v. *Consolidated Properties, Ltd.* (1933), 148 L.T. 407, by which the expression is extended to mean whatever may be necessary to make the subject-matter function, there is much to be said for the view that the replacement demanded was not covered by the subsection.

But the Court of Appeal did not agree with the Official Referee's decision that at common law the measure of damages in such a case was the cost of carrying out the work if it were to be carried out. It is, of course, well known that before the enactment mentioned was passed a covenantee landlord under a covenant to repair was entitled to dilapidations though he, or the next tenant by agreement with him, proposed to demolish the premises (*Rawlings* v. *Morgan* (1865), 18 C.B. (N.S.) 776; *Inderwick* v. *Leech* (1885), 1 T.L.R. 95, 484) or changes in the character of the neighbourhood made repairs of the kind called for a waste of money (*Morgan* v. *Hardy* (1886), 17 Q.B.D. 770). In *Joyner* v. *Weeks* [1891] 2 Q.B. 31 (C.A.), no less a person than Lord Esher, M.R., described the rule by which the covenanting lessee must pay the lessor a reasonable and proper amount for putting the premises into the state of repair in which they ought to have been left as highly convenient, simple and businesslike, which avoided the trouble of going into subtle refinements.

The Court of Appeal, however, considered that there was no true analogy between breach of covenant to repair and breach of covenant to reinstate; Lord Goddard, C.J., said that in the former case the landlord must suffer some damage as long as the house remained in existence, if only because it would fetch less. But when, as in the present case, there was no intention of doing the work and no depreciation, the general rule of ascertaining what was the damage actually suffered should be applied.

Some reference was made to another provision of the 1927 Act, namely, s. 19 (2), which imports into covenants against the making of improvements without licence or consent a proviso that such is not to be unreasonably withheld, which proviso is, however, not to preclude (i) the right to stipulate for payment of a reasonable sum in respect of damage to or diminution in value of the premises or of neighbouring premises of the landlord's, and (ii) in cases in which letting value is not increased, stipulating for an undertaking to reinstate "where such a requirement would be reasonable." On this Lord Goddard, though he had declined to express an opinion on the applicability of s. 18 (1), said, in effect, that while in fact consent had been given this subsection would, in view of the provision about letting value, otherwise have prevented the plaintiff from insisting on the covenant to reinstate. The learned judge also reminded us that whether an alteration is an improvement or not is to be decided by looking at it from the tenant's, not the landlord's, point of view; there are, indeed, four authorities to this effect.

One may, indeed, wonder why the original tenant or assignees did not avail themselves of the procedure for qualifying for compensation for improvements, under Pt. I of the Act; true, there was, according to the judgment, no evidence that the letting value of the holding was increased, but it looks very much as if this had been the case. But if one is to be wise after the event one may also wonder whether, since alterations were clearly contemplated, the landlord might not effectively have achieved his object by providing for increased rent.

As to the problem mooted in my opening paragraph, the answer that suggests itself is that the lady's position would depend on whether or not she intended to resume possession (I assume that the house would not fetch less in the market by reason of the alterations). And one is left with the impression that there is something to be said for Lord Esher's dislike of subtleties and desire for simplicity.

R. B.

HERE AND THERE

ASSIZE DRAW

When something like the Haigh case emerges for trial in the County of Sussex, Lewes on the Ouse thanks the goodness and the grace that made it an Assize town a hundred and fifty years ago. (Before 1800 the advantage was divided between Horsham and East Grinstead.) Now an adequately publicised killing will fill to overflowing the boarding-houses and hotels there and attract special bus services for the convenience of those citizens of the Welfare State who can spare a day or two from the production and export drive to catch a flying glimpse of a temporary public figure. Houses may be let for the occasion without thought of the Rent Tribunals. Telephones may be lent to eye-witness journalists with every prospect of a handsome return. If every Summer Assize could provide such an attraction for the multitudes whose tastes so evidently lie in that direction, we might even have a public relations heat-wave holiday slogan: "Come to lovely Lewes and let your blood run cold." Of course, one would have to guarantee a sufficiently long run for the show. Witnesses taken at the rate of thirty a day, no stirring cross-examinations on behalf of the defence, businesslike speeches of an hour or less—in fact Themis at her plainest: few will knowingly spend a night on the pavement for that, even with a close-up of the forensic methods of the Attorney-General thrown in. The brevity could hardly have been foreseen by the exercise of ordinary skill and judgment, especially with the champions of Nuremburg opposed to each other. Down the centuries, through wars and rumours of wars, the draw of a front page "private enterprise" killing never flags. It is interesting in people who never fail to give a disapproving twitch at mention of a bull fight.

SLIGHT INTRUSION

Solicitors, of course, will recall, with a shudder of professional distaste, that a dozen years ago Haigh spent an interesting period at Guildford frolicking in the lap of the law itself as a rising but totally unqualified member of their profession. He knew enough about law and finance to impress his clients and, with his celebrated salesman's charm, appropriated enough of their property to be awarded three years' penal servitude at the Surrey Assizes, after a genuine solicitor had found his Achilles heel by noticing, I think, a missing "d" in his spelling of Guildford. The opinion in Lincoln's Inn is that the powers of attorney which played such an essential part in his subsequent major exploits must have been drafted with no little technical ability. Incidentally, the Chancery courts will doubtless hear more of the affair, taking over where Humphreys, J., left off. Someone is bound to come to court to ask for a declaration that the sales effected under a forged power of attorney are void. But all-night queues for the public gallery winding along the Strand are not anticipated for that occasion.

EXPERIENCED FIREMAN

In the fire which recently damaged the seventeenth century manor at Horsley Green near High Wycombe, the Lord Chancellor and Lady Jowitt were among the guests who helped to save furniture from the flames. It does not appear that the Great Seal of the Realm was in any peril and it is to be presumed that its Keeper had left it in some place of safety elsewhere. Lord Jowitt has good reason, from personal experience, to know all about prompt action in this particular sort of emergency, for, while he was yet Sir William Jowitt, he suffered an alarming ordeal when the library of his home, Budds Farm, near Wittersham in Kent, caught fire in the night. From a bedroom immediately above, he and Lady Jowitt reached the ground by a rope of knotted blankets. Having run barefoot to arouse the head gardener in his cottage, he assisted in the rescue of his sister and three servants, and for an hour and a half the family

and tenants fought the blaze. Lady Jowitt drove six miles to Rye where the fire brigade dutifully turned out as a gesture of sympathy but felt that it would be *ultra vires* for them to attend an occasion beyond the borders of their borough and county. The Tenterden brigade duly set out but were halted by a breakdown on the way. At last the Hawkhurst brigade arrived but by that time the fire had been got under control by private enterprise. Lord Jowitt no longer lives at Budds Farm. He parted with the estate for £30,000 to Mr. Conrad Mann, a director of Mann, Crossman & Paulin, the brewers, sacrificing rural delights to live with his work in the spacious flat provided for the Lord Chancellor in the Palace of Westminster. RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Minimum Scales of Conveyancing Charges

Sir,—I have read the letters of Mr. R. E. Ball and of Mr. T. Rigby. I have a lot in common with what both of these solicitors say. Whilst living some five years ago in another district I was approached by a solicitor in that district to join the local Law Society—this request was rather forcibly put and it behoved me to be on my guard lest I should be committing myself to a position of further control. Being an individual who detests unnecessary compulsion, I elicited the information that by joining I would be obliged to enter into a deed by which I should be liable to a fine of £100–£200 if I made a breach of the rules, viz., by charging less than its scale. In reply to my query that this might be difficult at times my enjoiner replied with a sigh of disappointment that he had been refused "permission" to charge a less fee in a "very deserving" case, much to his regret. Apparently in this particular district there had been fee competition.

It seems difficult to believe that solicitors would allow themselves to be denied their freedom to charge reasonable fees entailed in their work. Have we not enough of interference caused by badly conceived Acts of Parliament and rules and regulations? Most of this interference has come about without referring to the electorate. Is it proposed to embroil solicitors into fresh troubles without referring the suggestion to all solicitors? Before putting any referendum forward to solicitors full information with the addition of the results of benefits and disadvantages experienced by the local Law Societies should be useful. At the moment I am much opposed to the burden of being saddled in every conveyancing matter with minimum charges.

Sheringham. A. E. HAMLIN.

New Motor Cars: Priority for Solicitors

Sir,—I am writing to draw your attention (other solicitors are unhappily aware of it) to the totally unfair position in the motor car home market which solicitors occupy.

The allocation of cars is apparently made by the distributors to their customers in orders of priority dictated by themselves, and the only priorities recognised are the medical profession.

The needs of solicitors—and especially country solicitors—appear to have been completely and absolutely ignored. To a country solicitor a car is the same necessity as to a doctor or a nurse, but officialism does not appear to think so.

I—in company with others of my professional brethren—ordered a new car (in my case two years and three months ago) and I have been informed that it will be five years before I can expect to get it. The same statement is true as concerns divers makes.

The medical profession has enjoyed its priority on account of the vigour of its representative body. Could not The Law Society do somewhat the same for us?

I see some of the powers that be have of late said some grateful things to and about The Law Society. Could not the Society induce other powers that be to show their gratitude in some practical form by opening the car market to us a little so that we may carry on the good work for which the Government (on the surface at any rate) appears so grateful.

Bridgwater. WM. R. ARMSTRONG.

Joint Accounts

Sir,—Would not the difficulty referred to [*ante*, pp. 412, 481] by Mr. Hatton and others be readily resolved if the first-named trustee included in his registered address, and as a part thereof, a separate "Box number" for each trust? As a general rule a stockholder would be entitled to have notices sent to a Box number.

Lincoln's Inn, W.C.2. JOHN A. BRIGHTMAN.

Restraints upon Anticipation

Sir,—Notwithstanding what "Richard Roe" states in your issue of 23rd instant regarding the views of Lincoln's Inn on the removal of the restraint, we feel bound to differ from the late Sir Arthur Underhill and Lord Jowitt.

Our present senior partner has been in practice for upwards of forty-three years and has had a very wide experience of restraints and discretionary trusts as well as applications to the court to lift restraints.

We feel very strongly that a restraint is an antiquated anachronism limited moreover to married women and indeed to *married* women only, and that a discretionary trust applicable to both sexes and accompanied by a power of advancement varied according to circumstances is in every case far more useful. For very many years past we have advised our clients in this way, and have had continual cause to congratulate them and ourselves when our advice has been followed.

What most determined advocates of the abolition overlook, however, is the fact that in some cases the restraint, valid when imposed, is the only protection against improvidence or misfortune and that the power of a court to lift this restraint is always exercised in proper circumstances. This being so, unquestionably it is, in our opinion, most undesirable and even improper for the Legislature to interfere with provisions properly inserted by testators and settlors in documents, while the law enables them to do so.

London, W.C.2. HICKS, ARNOLD & CO.

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NOTES OF CASES

COURT OF APPEAL

NULLITY: RESPONDENT DOMICILED ABROAD

Casey *v.* Casey

Bucknill, Somervell and Cohen, L.JJ.
23rd May, 1949

Appeal from Judge Earengey sitting as a Divorce Commissioner.

The principle that the court of the husband's domicile is the sole court for dissolving a valid marriage, so that the court in England has no jurisdiction, if at the date of the institution of the suit the husband was domiciled abroad, to grant a decree on the ground that the marriage was celebrated on England, applies also to a marriage which is voidable, as distinct from being void, because of the husband's wilful refusal to consummate it. The fact of the celebration of a marriage in England is no more in the latter than it is in the former case sufficient in itself to found jurisdiction for petition for termination of the union.

In 1943 the appellant, domiciled and resident in England, married in England the respondent, a Canadian soldier domiciled and resident in Canada. The husband refused to consummate the marriage, and in June, 1945, returned to Canada. In May, 1946, the wife joined him there, but he still refused to consummate the marriage. She thereupon returned to England and petitioned the court for a decree of nullity. The Commissioner dismissed the petition for want of jurisdiction. The wife appealed. (*Cur. adv. vult.*)

BUCKNILL, L.J., in a written judgment, said that the only material difference between the facts here and those in *De Reneville* v. *De Reneville* [1948] P. 100; 92 SOL. J. 83, was that here the marriage was celebrated in this country and there in France. For the wife it was contended that the fact that the marriage took place in England gave the court jurisdiction. In *Simonin* v. *Mallac* (1860), 2 Sw. & Tr. 67 and *Sottomayer* v. *De Barros* (1877), 3 P.D. 1, the marriage here was invalid as a matter of form because of matters breaking the status of the contracting parties in their own country. Here the marriage was perfectly valid in point of form. The same applied to *de Massa* v. *de Massa* (1931), *The Times*, 31st March, followed by Henn Collins, J., in *Galène* v. *Galène* [1939] P. 237. Support for the wife's argument might be found in *Ogden* v. *Ogden* [1908] P. 46, where Sir Gorell Barnes, P., relied on *Linke* v. *Van Aerde* (1894), 10 T.L.R. 426. In the result, there was no clear decision on the question of jurisdiction in nullity cases on the ground of wilful refusal where the marriage had been celebrated in England but the respondent was domiciled and resident abroad. It was well established that the court on a petition for the dissolution of a marriage had no jurisdiction to grant a decree on the ground that the marriage took place in England, if the domicil of the husband, and therefore of the wife, was abroad at the time of the institution of the suit: *Le Mesurier* v. *Le Mesurier* [1895] A.C. 517. In his (his lordship's) opinion, there was no valid reason for a distinction on the ground of the place of celebration of marriage between a petition for dissolution of a valid marriage and a petition to annul a marriage on the ground of wilful refusal. It was not necessary to decide whether there was a difference between the jurisdiction to dissolve and the jurisdiction to annul, in that the *residence* of both parties in England at the time of the institution of the nullity suit might be sufficient to establish jurisdiction although it was insufficient in the case of a valid marriage which was not voidable but merely dissoluble. The fact that the marriage took place in England while the husband was on active service here did not raise an inference that the parties intended to make England the matrimonial domicile. The appeal failed.

SOMERVELL and COHEN, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *F. K. Glazebrook* (*Sidney L. Sampson*). The husband did not appear and was not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COUNTY COURT: APPEAL WITHOUT LEAVE

Mason *v.* Burningham (No. 1)

Lord Greene, M.R., Evershed and Singleton, L.JJ.
26th May, 1949

Preliminary objection to the hearing of an appeal from Bow County Court.

The plaintiff bought a typewriter from the defendant for £20, and then spent £11 10s. on its overhaul. The defendant was unaware that the typewriter had been stolen. The plaintiff, having had to hand it over to its rightful owner, claimed £31 10s. from the defendant. The defendant paid £10. The plaintiff issued a writ claiming the balance of £21 10s., whereupon the defendant paid a further £10, which the plaintiff acknowledged as reducing the claim to £11 10s. The particulars of claim claiming £21 10s. were delivered a few days later. The county court judge dismissed the action. The plaintiff having appealed, the defendant now took the preliminary objection to the appeal that leave to appeal had not been obtained under s. 105 of the County Courts Act, 1934, whereby "without leave of the judge there shall be no appeal (*a*) in any action founded on contract or tort . . . where the debt or damage claimed does not exceed £20."

LORD GREENE, M.R., EVERSHED and SINGLETON, L.JJ., agreeing, said that it was argued for the plaintiff that the amount of the debt or damage claimed was fixed by the particulars of claim served; that in order to recover payment from the defendant proceedings to recover £21 10s. were necessary, the defendant being in default; and that, although the defendant had been given costs appropriate to that amount, he was now contending that the claim must be treated only as one for £11 10s. For the defendant it was argued that the court must look at the substance of what had happened; that while the original claim was for £21 10s., it must be taken to have been amended as soon as it appeared that all that the plaintiff could obtain judgment for was £11 10s.; and that the claim then ceased to be one for more than £20. It was, however, impossible to say what was the "debt or damage claimed" without regard to R.S.C., Ord. 47, r. 6, which provided that the defendant's costs were to be determined by the amount claimed and not by the amount recovered under the judgment. If the plaintiff had succeeded, what could have been said to be the amount recovered? In *Pearce* v. *Bolton* [1902] 2 K.B. 111, a Divisional Court decided that the amount claimed consisted of two amounts (1) the sum paid on account, and (2) the sum for which judgment was given. In *Lamb Bros.* v. *Keeping* [1914] W.N. 225, the payment on account was made after the writ was issued but before its issue was known to the defendant. That was held not to make any difference. On the authorities, the amount "claimed" here was more than £20. Objection overruled.

APPEARANCES: *Leon* (*Duthie, Hart & Duthie*); *O'Sullivan*, K.C., and *J. N. Watkins* (*Devonshire & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SALE OF STOLEN ARTICLE: MEASURE OF DAMAGES

Mason *v.* Burningham (No. 2)

Lord Greene, M.R., Evershed and Singleton, L.JJ.
27th May, 1949

Appeal from Bow County Court.

The defendant innocently sold the plaintiff for £20 a typewriter which proved to have been stolen. The plaintiff, having spent £11 10s. on having it overhauled was informed of the theft and had to hand the machine back to its true owner. She claimed from the defendant £31 10s.—the price paid and the cost of the overhaul. As the defendant had paid £20 by the time the case came for trial, the only question was whether the £11 10s. could be recovered as part of the damages. The county court judge held not, and the plaintiff appealed. By s. 12 of the Sale of Goods Act, 1893, there is an implied condition in a contract of sale that the seller has a right to sell the goods and an implied warranty that the buyer shall have quiet possession of the goods. By s. 53 (2) "The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty."

SINGLETON, L.J., LORD GREENE, M.R., and EVERSHED, L.J., agreeing, said that the plaintiff had in fact only claimed under the second head of s. 12. The defendant contended that there had been only a breach of the implied condition that the defendant had a right to sell; that the plaintiff was only entitled to be repaid the purchase money; and, further, that the expenses of overhaul were not damages naturally resulting in the ordinary course of events from the breach of warranty within s. 53 (2). In cases of breach of contract the aggrieved party was only entitled to recover such part of the loss as was at the time of the contract reasonably foreseeable as liable to result from the breach: see *Victoria Laundry (Windsor), Ltd.* v. *Newman Industries, Ltd.* (1949), 93 SOL. J. 371; 65 T.L.R. 274, *per* Asquith, L.J. The county court judge had found that the plaintiff had behaved in a common-sense way. The expenses of the overhaul followed naturally from the contract and constituted a head of damage within s. 53 (2) of the Act of 1893. The plaintiff was therefore entitled to recover the £11 10s. Appeal allowed.

APPEARANCES: *Leon* (*Duthie, Hart & Duthie*); *O'Sullivan*, K.C., and *J. M. Watkins* (*Devonshire & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVORCE: BIRTH AFTER 360 DAYS

Preston-Jones *v.* Preston-Jones

Bucknill, Asquith and Denning, L.JJ.
22nd July, 1949

Appeal from Mr. Commissioner Blanco White, K.C.

The appellant husband and the respondent, his wife, were married on 14th April, 1941, when the husband was serving with the Royal Air Force. A son was born to the wife on 13th August, 1946. Nine months before that date, on 13th November, 1945, the husband was stationed in Germany. Royal Air Force records showed, the Commissioner found, that he was not in the United Kingdom between 17th August, 1945, and 9th February, 1946, the date of his demobilisation, that was, between a date 360 days before the birth of the son and a date 186 days before that birth. No allegation of any kind was made as to the wife's conduct or disposition except the allegation of adultery, which the wife denied, based on the long period of gestation. The Commissioner dismissed the petition, and the husband now appealed. (*Cur. adv. vult.*)

BUCKNILL, L.J., reading his judgment, with which ASQUITH, L.J., agreed, said that the case had originally been heard in December, 1947, by Judge Burgis, sitting as Divorce Commissioner, who dismissed the petition. In July, 1948, the Court of Appeal ordered a new trial because the evidence of both husband and wife on the question whether or not they were having intercourse with each other at the time when the child was presumably conceived, that was, in November, 1945, was inadmissible under the rule in *Russell* v. *Russell* [1924] A.C. 687, as interpreted in *Ettenfield* v. *Ettenfield* [1940] P. 96. Judge Burgis had based his judgment largely on that evidence. At the second trial the wife had never said that she at any time thought that she had conceived a child in August, 1945. Her case had at first been that she conceived it in February, 1946. As the Commissioner was also satisfied beyond reasonable doubt that the intercourse from which the child had proceeded took place more than 186 days before its birth, that was, earlier than 9th February, 1946, the question was whether it was contrary to the laws of nature that the child, if conceived before 17th August, 1945, could be born a normal, healthy child 360 days later without any forcing or prolonged labour. On the scientific question what was the longest practicable period of delay between coition and impregnation, the Commissioner said that he had not before him medical evidence on which he felt it safe to condemn the wife, and so he had dismissed the petition. His lordship discussed *Gaskill* v. *Gaskill* [1921] P. 425 (331 days), *Wood* v. *Wood* [1947] P. 103 (346 days), *Hadlum* v. *Hadlum* (1948), 92 SOL. J. 528; 65 T.L.R. 30 (349 days), and *M—t* v. *M—t* (1948), *ante*, p. 28; 65 T.L.R. 75 (340 days), and referred to the husband's application for leave to call further evidence. The Commissioner had adopted a theory to explain the birth of the child 360 days after the last opportunity for intercourse between husband and wife although there was no evidence to support the theory and it was not the wife's case. It was therefore proper that the husband should have an opportunity of calling evidence to rebut the theory. That scientific question would be better investigated in a new trial, unless the court thought it proper to reverse the Commissioner's decision on the ground that, on his finding that the husband was not with his wife between August, 1945, and February, 1946, it should be held that the wife had committed adultery. He (his lordship) did not think it right to allow the appeal on that ground having regard to the course which the case had taken before the Commissioner, to the decisions in similar cases above referred to, and to the absence of any clear scientific evidence on the point. His conclusion was that the appeal should be allowed and the whole case re-tried, if possible by a judge of the High Court.

DENNING, L.J., dissenting, said that the many matters of which judges could take judicial notice without requiring evidence about them included the facts of nature. A judge did not require evidence to prove that, in the ordinary course, nine months elapsed between the conception and birth of a child. He might also take judicial notice of the fact that there might be a margin of a week or two on either side without noticeable effect on the child, but that if the margin became a couple of months either way the result would be apparent on the body of the child. Those and other relevant ordinary facts of nature were, he thought, sufficient to decide the case. The child was a normal full-time child born on 13th August, 1946, which meant that in the ordinary course it was conceived in November, 1945, and the case put forward by the wife did not suggest any earlier pregnancy. Once it had been shown beyond reasonable doubt that the husband was not in this country from 17th August, 1945, to 9th February, 1946, there should have been the end of the case: the obvious inference was that the wife had been guilty of adultery. The Commissioner, on his own initiative, had taken the remarkable course of suggesting that the child might have been conceived of marital intercourse before the husband left the country in August, 1945. The wife herself had never suggested that as a possibility, no doubt because she knew that there had been no signs of such a thing before November, 1945. The Commissioner had put forward the theory of a delayed impregnation occurring only in November. He (his lordship) thought that any ordinary person would describe that suggestion as quite fantastic. In the absence of any evidence on the matter he would have thought that, according to the ordinary knowledge of mankind, a 360-day normal baby was impossible; and the court should not assert that it was possible unless there were direct medical evidence to that effect. None had been produced in the present case or, so far as he knew, in any other. He could not bring himself to agree to yet another trial. Had there been any suggestion on behalf of the wife that a 360-day normal child was possible the husband would have called evidence to refute it, as had been done in *M—t* v. *M—t*, *supra*, whereas the only issue in the two trials had been that of the husband's visit in November, 1945. He (his lordship) would have been for allowing the appeal and granting a decree *nisi* there and then. Appeal dismissed.

Leave to both sides to appeal the the House of Lords.

APPEARANCES: *Vick*, K.C., and *Mars-Jones* (*Edward Mackie and Co.*); *Middleton*, K.C., *Brandon* and *Arnold-Baker* (*Jaques and Co.*, for *Cyril Jones, Son & Williams*, Wrexham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

INCOME TAX: COTTON: VALUE OF STOCK-IN-TRADE

Ryan *v.* Asia Mill, Ltd.

Croom-Johnson, J. 5th May, 1949

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The respondent company appealed against an assessment to income tax for the year ending 5th April, 1946, the amount of which depended on, *inter alia*, the value of the company's stock-in-trade in hand on 13th January, 1945. It was agreed that its value was to be assessed on the basis of its true cost to the company. The company were cotton spinners. During the year ending on that date they paid the Cotton Controller a sum of £55,087, which, it was agreed, was for income tax purposes deductible in computing their profits for the year in question. The question in dispute was whether the £55,087 should be taken into account in ascertaining the true cost of the stock-in-trade. From 1941 all cotton had to be bought from the Cotton Controller, who fixed day-to-day prices for the purchase of cotton and the margins to be added in ascertaining the selling prices of yarn. Under an arrangement made in August, 1942, spinners were urged to assist the Controller by buying cotton to the fullest extent of their storage space irrespective of their yarn orders in hand. In the event of a rise or fall in the general price of raw cotton they were to pay to or receive from the Controller sums depending on whether their positions were "long" or "short" at the time of the price variation. A spinner's position is "long" where he has bought a weight of cotton in excess of the weight of yarn which he has contracted to sell. The arrangement was explained to the company in a letter from the Controller. From 17th April, 1944, the prices of all types of cotton were increased by 4½d. a pound in respect of cotton bought before then and after 1st February, 1943. As the company's position on 15th April, 1944, was "long" £55,087 became due to the Controller from the company based on the weight of cotton to the extent of which the company's position was then "long." It was contended for the company that, as its cotton had been bought outright at fixed prices under contracts containing no provision for price adjustments in the event of subsequent changes in the prices of cotton, the cost of its stocks must be ascertained solely by reference to invoice prices paid; that the £55,087, calculated by reference to the company's cover position at the time of the general increase, did not represent an addition to the cost of the cotton; and that accordingly the £55,087 did not require to be treated as part of the true cost of the company's cotton stocks. It was contended for the Crown that the stock at the material date consisted of cotton for which in addition to the invoice price 4½d. a pound had

been paid by the company to the Controller, so that the true cost of their cotton stocks to the company was the invoice price plus the additional 4½d. a pound. Having regard to the out-and-out purchase of the cotton under contracts containing no provision for price adjustment, and to their opinion that the £55,087 was paid pursuant to a commercial contract by reference to cover position, the Special Commissioners held that that sum should not be included in ascertaining the true cost of the company's stock-in-trade. They reduced the company's assessment accordingly, and the Crown now appealed.

CROOM-JOHNSON, J., said that the Special Commissioners had confused the purchase price of the cotton, which was not the question, with the value of stock based on true cost to the company, which was. No doubt, the Controller could have said that he would, in the event of a general change in the price of cotton, adjust the contract price. He had not done so, however, and if he had many complications would have arisen. The whole arrangement was essentially an adjustment with regard to stock, including in that word stock not yet delivered. Moreover, once the Controller had announced the arrangement by letter, subsequent orders for cotton sent to him must be deemed to have been accepted by him as subject to the arrangement. In view of the foregoing, it was impossible to hold that the £55,087 was not to be taken into account in ascertaining the true cost, not of deliveries under particular contracts, but of stock generally, at any particular time. The Commissioners had said that the £55,087 " could not be said to be part of the price of the cotton." No one had ever said that it was. The point was not the price of the cotton but its value measured by actual cost to the company. It was also wrong to hold that the cost was the invoice price. That price might in some circumstances be the test of the value of stock-in-trade, but it was not the only one. Appeal allowed.

APPEARANCES: *Sir Frank Soskice*, K.C. (Solicitor-General) and *Hills* (*Solicitor of Inland Revenue*); *Heyworth Talbot*, K.C., and *Borneman* (*Whitfield, Byrne & Dean*, for *J. Arnold Brierley and Robinson*, Oldham).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law].

EXCESS PROFITS TAX: " PROPRIETOR "

Inland Revenue Commissioners *v.* Heaver, Ltd.

Croom-Johnson, J. 16th May, 1949

Case stated by Amesbury Commissioners for the General Purposes of the Income Tax Acts.

The question arising was whether two shareholders were directors of the respondent company for the purposes of s. 13 (2) of the Finance (No. 2) Act, 1939, as amended by s. 31 of the Finance Act, 1940. The subsection provides for the allowance, in the computation of standard profits, of a specified sum in respect of each individual working proprietor, up to four, of, among other things, a company " the directors whereof have a controlling interest therein." The two shareholders in question, father and son, each held more than one-twentieth of the issued share capital of the company. The General Commissioners found (1) that they were directors in law of the company, and (2) that they had been fully engaged in the company's business during the material period, the condition " working " being accordingly fulfilled. No question arose on the second finding. By para. (*b*) of s. 13 (2), as amended, " The expression ' proprietor ' means . . . in the case of a company, any director thereof owning more than one-twentieth of the share capital of the company." By s. 22 (*c*) of the Act of 1939 the word " director " has the same meaning as in Sched. IV to the Finance Act, 1937, by para. 13 (*b*) of Sched. IV to which the expression " director " has, *inter alia*, the same meaning as in s. 144 of the Companies Act, 1929. By s. 144 (6), " for the purposes of this section a person, in accordance with whose directions . . . directors of a company are accustomed to act, shall be deemed to be a director . . . of the company." The Crown appealed against the finding that the two men were directors and, therefore, " proprietors " in respect of whom the sums in question were allowable for the purpose of reducing excess profits.

CROOM-JOHNSON, J., said that s. 144 of the Act of 1929 had to be read with s. 380 (1), the interpretation section, of that Act, although the Act of 1937 said nothing about the latter section. By s. 380 (1), " . . . ' director ' includes any person occupying the position of director by whatever name called." It was argued for the company that that meant that anyone who acted as a director, and therefore occupied the position of a director, was a director for the purposes of s. 144 of the Act of 1929, and therefore for those of the Act of 1937 and of s. 13 of the Act of 1939, as amended. That was a highly ingenious argument, appropriate to the subject under discussion. He did not, however, think that the words in s. 380 (1) defining ' director ' meant more than that for the purposes of the Act of 1929 it did not matter what a person was called if he were in fact discharging —which must mean lawfully discharging in accordance with the constitution of the company—directorial functions. Section 380(1) therefore did not help the company. The company's articles of association provided that the qualification for a directorship should be the holding of shares in the company to the nominal value of not less than £500. The two men concerned had never held so many shares in the company as that. Section 141 of the Act of 1929 imposed a statutory obligation on a director to obtain and hold the share qualification prescribed by the company's articles. The General Commissioners had made no findings of fact on which he (his lordship) could think that they had held the two men to be directors on the basis of being deemed to be directors under s. 144 (6) of the Act of 1929. According to the argument for the company these two men were to be regarded as directors for the purpose of the definition of " proprietor " because each held more than one-twentieth of the share capital of the company, although they had not taken the trouble to come by qualification shares as required by the company's articles and s. 141 of the Act of 1929. It was argued that it was still possible for a company to bind itself by the acts of a person although he were not qualified as a director, that in the present case the company would be bound by the acts of these two men, and that they were accordingly to be regarded as *de facto* directors. That was a complete misunderstanding of the decision in *Royal British Bank* v. *Turquand* (1856), 6 E. & B. 327: see in particular Lord Simonds' comments on that case in *Morris* v. *Kanssen* [1946] A.C. 459, at p. 474. It was impossible, as a matter of law, on the facts found by the General Commissioners, to hold that these two men were directors of the company. Appeal allowed.

APPEARANCES: *Ungoed-Thomas*, K.C., *J. H. Stamp* and *Hills* (*Solicitor of Inland Revenue*); *Sir Roland Burrows*, K.C., and *Honeyman* (*Church, Rendell & Co.*, for *David Nash & Co.*, Plymouth).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

SIR E. HILEY

Sir Ernest Varvill Hiley, K.B.E., Town Clerk of Leicester from 1902 to 1908 and of Birmingham from 1908 to 1916, died recently, aged 80. He was admitted in 1891.

MR. E. B. KITE

Mr. Edward Bagehot Kite, senior partner in the firm of G. H. Kite & Sons, solicitors, of Taunton, died on 21st July, aged 72. Mr. Kite was for twenty years Clerk to Taunton Borough Magistrates and was at one time Deputy Town Clerk of Taunton. He was admitted in 1898.

MR. G. S. MARTYN

Mr. Gerald Stephen Martyn, retired solicitor, of Chester, died at Dulverton on 4th July. He was admitted in 1900.

MR. W. J. RIGBEY

Mr. Woolaston John Rigbey, former senior partner in the firm of Rigbey, Brown & Mills, solicitors, of Birmingham, died recently at Tamworth-in-Arden, aged 70.

Wills and Bequests

Sir Thomas Biggart, solicitor, of Glasgow, left £254,600.

Mr. W. M. Boulton, solicitor, of Stanmore, left £27,883.

Mr. Frank Bowman, solicitor, of Sheffield, left £22,077, net personalty £22,005.

Mr. George Higgins, retired solicitor, of Sutton Coldfield, left £27,705, net personalty £27,488.

Mr. T. C. Jackson, solicitor, of Hull, left £170,148, net personalty £166,112.

Mr. H. Robb, retired solicitor, of Stirling, left £102,463.

Mr. O. H. Sharrott, solicitor, of Tamworth, Staffs, left £11,537 0s. 6d., net personalty £11,125 2s. 3d. Amongst the bequests was one of £50 to his clerk, Miss Margaret E. Cope, if still in his service; the residue fell to his son Mr. A. H. Sharrott, solicitor, of Lichfield.

Mr. Lawrence Rhodes Wharton, solicitor, of Heckmondwike and Mirfield, left £16,415 13s. 8d., net personalty £15,678 9s. 11d.

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—
River Great Ouse (Flood Protection) Bill [H.C.] [18th July.

Read Second Time :—
Airways Corporations Bill [H.C.] [20th July.
Ashdown Forest Bill [H.C.] [21st July.
Dartford Tunnel (Extension of Time) Bill [H.C.] [21st July.
Docking and Nicking of Horses Bill [H.C.] [20th July.
Housing (Scotland) Bill [H.C.] [20th July.
Marriages Provisional Order Bill [H.C.] [20th July.
Ministry of Health Provisional Order (Chichester) Bill [H.C.] [20th July.
Ministry of Health Provisional Order (Macclesfield) Bill [H.C.] [20th July.
Ministry of Health Provisional Order (Morley) Bill [H.C.] [20th July.
Ministry of Health Provisional Order (South Molton) Bill [H.C.] [20th July.
Salford Corporation Bill [H.C.] [19th July.
Southampton Harbour Bill [H.C.] [19th July.

Read Third Time :—
Barnsley Corporation Bill [H.C.] [21st July.
Colonial Development and Welfare Bill [H.C.] [19th July.
Colonial Loans Bill [H.C.] [19th July.
Edinburgh and Midlothian Water Order Confirmation Bill [H.C.] [20th July.
Glasgow Corporation Order Confirmation Bill [H.C.] [20th July.
Halifax Corporation Bill [H.C.] [20th July.
Housing Bill [H.C.] [20th July.
Legal Aid and Advice Bill [H.C.] [19th July.
Legal Aid and Solicitors (Scotland) Bill [H.C.] [21st July.
London County Council (Money) Bill [H.C.] [19th July.
Married Women (Maintenance) Bill [H.C.] [21st July.
Married Women (Restraint upon Anticipation) Bill [H.L.] [19th July.
Mersey Tunnel Bill [H.C.] [21st July.
Nurses (Scotland) Bill [H.L.] [21st July.
Pier and Harbour Provisional Order (Crarae) Bill [H.C.] [20th July.
Pier and Harbour Provisional Order (Southwold) Bill [H.C.] [20th July.
Slaughter of Animals (Scotland) Bill [H.C.] [21st July.
Swindon Corporation Bill [H.C.] [20th July.
Teesside Railless Traction Board (Additional Routes) Provisional Order Bill [H.C.] [20th July.
West Bromwich Corporation Bill [H.C.] [21st July.

In Committee :—
Adoption of Children Bill [H.C.] [21st July.

B. Debates

On moving the Second Reading of the **Adoption of Children Bill,** Lord Simon said that the common law knew nothing of adoption of children by any legal process. It was less than a quarter of a century since the Adoption of Children Act, 1926, had first made provision, and there had been one amending Act—the Adoption of Children Regulation Act, 1939. He pointed out that so far as that legislation was concerned, a "child" was any person under twenty-one years of age. At present three courts had jurisdiction to make adoption orders—magistrates' courts, the county courts and the High Court, and last year some 20,000 such orders had been made. Lord Simon put forward five general propositions; first, that the governing consideration should always be what was best for the child; second, that whenever it was reasonably possible the best thing was for the child to remain with its mother; third, that an adoption order should only be made after the most careful consideration and with the consent not only of the adopting party but of the natural parent as well; fourth, that the natural parent's consent should never be given *before* the child was born, indeed not until about six weeks after the birth. Finally, he thought that after an experimental period of, say, three months, during which the child had been with the adopting parents, the court should make the adoption order which should be absolutely final. He thought it best that the natural parent should not know the identity of the adopting parent, though the child should be allowed to know the truth at a fairly early age otherwise it might learn accidentally and suffer a great shock.

Reviewing the provisions of the Bill, Lord Simon said cl. 1 would remove doubts as to the validity of an adoption of an illegitimate child by either of its natural parents. Clause 2 required the adopter to be at least twenty-five years of age, unless he were a relative when the age fixed was twenty-one. Clause 3 required the consent of "every person or body" who was a parent or guardian or who was liable to contribute to the maintenance of the infant by virtue of any order or agreement. Clause 4 would repeal the rule in *Russell* v. *Russell* as regards evidence of the paternity of a child. Clause 5 provided for the three months' trial period to which he had already referred. Clause 7 provided that for the purposes of the Bill "local authority" meant the council of any county or county borough. Clause 9 provided that, should the adopting parent die without making a will, the adopted child would share any property together with the natural children.

Lord Maugham said he thought that Lord Simon had not paid enough attention to the clause in the Bill allowing the court to dispense with the consent of parent or guardian. He thought the most valuable power of the court under the 1926 Act was that enabling it to take a child away from a "wrong-doing" mother and vest all her powers in an adopter. In the past, adoption orders had often been delayed because a parent, although he or she had gravely neglected his or her duties, had violently opposed an adoption order. If the Bill were passed orders would be made in future dispensing altogether with the consent of the mother or father. Sir Gerald Hurst, a county court judge, had told him that he made some 500 adoption orders a year and took the greatest interest in the difficulties which arose when adopting parents died without having made a will, the effects of which were in nearly every case contrary to their wishes. According to his experience people of the working class practically never made wills. Lord Maugham thought cl. 9 a very useful one.

The Bishop of Ipswich thought that the mother's signature, when she signed the consent to the adoption order, should be witnessed by some reputable person so as to safeguard her from undue influence. He thought the mother ought also to be able to lay down stipulations as to the religion in which the child was to be brought up. When a council was participating in arrangements for the adoption of a child he thought it undesirable that any department of that authority should also be appointed as its guardian *ad litem*, as difficulties might arise between the officers of the two departments.

Lord Amulree welcomed the provisions enabling British parents to adopt a foreign child and the provision that such a child became a British subject. He thought the mother should be able to know what type of employment the adopter had, his income, and what the religious surroundings of the child would be. He was rather worried about cl. 10 of the Bill, which sought to bring adopted children within the prohibited degrees of consanguinity. Lord Holden, on the contrary, thought that if a child was adopted, it should be regarded as part of the family and as coming within the laws of consanguinity. The Earl of Iddesleigh thought that after the General Election the Government should look further into the working of the adoption laws. In a few years they would be able to see the effect of the Children Act and would know how far it would be wise to add to the functions of the children officer. He also thought steps should be taken to discourage the practice of extra-legal adoptions, and it ought not to be made too easy for the unmarried mother to free herself from her responsibilities. Viscount Caldecote thought the Bill provided a loophole whereby undesirable aliens might get into the country and become British subjects much more easily than if they had to be naturalised. He thought that ultimately all adoptions should be carried out through the registered adoption societies or by local authorities. A point not covered by the Bill was that s. 2 (5) of the 1926 Act prohibited persons from the Dominions from adopting children here; he thought they should be allowed to do so where legal adoption existed in their own country.

In replying to the Debate, Lord Simon said cl. 3 (1) of the Bill had been put in because there was a decision that seemed to imply that the court could dispense with consent in any case. That was so wide that it was thought desirable to re-define the conditions rather more narrowly. He thought they might later provide for the mother giving a general consent to adoption, subject, for example, to her wishes as regards the child's religion being respected. [11th July.

Upon the Report Stage of the **Licensing Bill** the LORD CHANCELLOR introduced a new Schedule to the Bill setting forth s. 40 of the 1910 Act (which deals with disqualification of justices), as amended by the Bill. This had been done, he said, at the request of the Magistrates' Association, and the Justices' Clerks' Society, so that anybody might look at the Schedule and see what was involved. [12th July.

During the Committee Stage of the **Married Women (Restraint upon Anticipation) Bill,** LORD SIMON moved to leave out cl. 1 (which abolishes restraints) and to insert a new clause amending s. 169 of the Law of Property Act (which enables a married woman to apply to the court to have the restraint relaxed if it appears to be for her benefit) to provide that the court might treat it as being for her benefit if it was satisfied that it would be for the benefit of husband, child or collateral relation, and that in deciding whether to release her the court could take into consideration the fact that since the restraint had been imposed there had been a substantial diminution in her income from the property concerned, and that the court should be empowered to remove the restraint altogether if satisfied that that would be in her interest, as well as to enable her to bind her interest for a particular transaction, etc., as at present. Lord Simon said this was not a legalistic question, but one of public policy—whether we ought by a general Act to cancel a provision which existed in so many marriage settlements and wills. In these cases the settlor had usually considered the matter very carefully with his solicitor and often also with counsel. As the law stood at present the court could only relax a restraint if satisfied that to do so was in the interest of the woman herself, which very often in practice meant that the relief was not given. A change was needed but it should be done by looking at each individual marriage settlement and not wholesale. It was ridiculous to suggest that restraints had always been created because the woman was the simple sort who could not look after her own affairs. Officers on retired pay were prevented from anticipating their pension rights for a lump sum; why was it wrong that some married women should be similarly restricted?

Lord Simon said he had received a letter from an eminent and well-known firm of solicitors who had been responsible for many of these marriage settlements. They had said that without the protection of the restraint in many cases the settlor would not have provided the funds, and it was too drastic to abolish the restraints altogether—rather should the powers of the court be enlarged. He thought the judgment of a judicially-minded person should be substituted for the settlor's judgment—it was not an expensive business, being a simple application supported by affidavits, and the costs usually came out of the estate.

LORD SIMONDS said he would like to oppose Lord Simon's views as vigorously as he could. His amendment was really a new Bill and would in fact prove a disservice to those whom it was meant to serve. The restraint was a legal anomaly due to conditions in an earlier age. The restraint was invented merely to mitigate the harshness of the common law towards married women and to prevent the husband getting control of her money. What justification was there for it now, bearing in mind how changed was the position of married women? It was all very well to suggest an application to the court. Suppose a lady, because of illness or her husband being unemployed, wanted to raise, say, £500. If she went to her solicitor, he would say "this is not the sort of matter that comes the way of solicitors every day of the week; I must take the opinion of counsel." Time would pass and expense accumulate, and then counsel would say: "This is not a matter of law; this is a matter of discretionary jurisdiction and it will depend upon the idiosyncrasies of the particular judge." If she wished to apply to the court her solicitor would be bound to tell her that it would cost at least £50, and, being already in distress, she would not be able to find that and would be unable to apply to the court after all. He thought the dead hand of a testator should no longer press down on living necessity.

LORD SALISBURY said it was no use talking of "the dead hand." A man had made a settlement and had put in a provision which he was perfectly entitled to put in. It was a dangerous precedent for Parliament thus to wash out a provision which had been inserted after most careful thought by settlors and their legal advisers. If the machinery of application to the court was too expensive, that was a dreadful commentary on legal procedure. He thought Lord Simon's amendment was the right and proper way to deal with the matter. LORD MAUGHAM said that in *Hood-Bars* v. *Cathcart*, Lord Davey, a great equity lawyer, had expressed the opinion that the restraint was invented to protect the wife against the improper tyranny of her husband. Until she actually married, the woman could execute a deed removing the restraint, and could then do as she pleased with the property when she married. Since it had been invented for that purpose, was it now needed? He thought not; the position of married women had changed so greatly since the eighteenth century. He doubted very much whether the High Court would exercise its jurisdiction as proposed under Lord Simon's clause. As to the judges removing the restraint altogether—there were five Chancery judges who would sit separately and in chambers, and he could see no likelihood of a general rule being laid down which would bind the various judges. Some would think the restraint should always be removed, others would probably refuse to exercise their discretion. The abolition of new restraints had been accepted by the profession as reasonable and had been proved not to result in any grievances, and he thought it would be in the interests of married women to make the abolition retrospective.

In replying to the debate, the LORD CHANCELLOR said that the last occasion prior to the Mountbatten Estates Bill on which the Commons had disagreed with the Personal Bills Committee of the House of Lords was in the reign of Queen Elizabeth. It was all very well to say that the law should be cheaper—he was appointing a committee to try to make it cheaper—but there was no doubt that the method of applying to the court would cost a considerable sum of money which could often be ill-afforded. Moreover, the law in this connection was obscure and uncertain before and Lord Simon's amendment would only make it more so. On a division, Lord Simon's amendment was defeated. [14th July.

C. QUESTIONS

VISCOUNT CECIL OF CHELWOOD asked whether a non-profit making public organisation recognised as a charity for purposes of taxation, which had been ejected from its present premises by one of the newly nationalised industries who were its landlords, was liable to pay the full development charges in respect of other property necessarily acquired to carry on its work. In reply LORD MACDONALD said that if an organisation acquired land after 1st July and obtained planning permission to build on it or materially change its use, then, under the terms of s. 69 of the Town and Country Planning Act, 1947, a development charge was payable if the permission added to the value of the land.

Under s. 85 of the Act, land held on 1st July, 1948, by a charity for the purposes of a charity was exempt from charge if it was used in any manner for or in connection with the purposes of the charity. Land acquired by a charity after that date, however, was not in any way exempt from development charge, and if the charity carried out a material change of use in the land even though the use was for charitable purposes, the question of development charge would arise. LORD SALISBURY said that in the particular case in question all that was involved was a change of use of rooms from one use to another, and to a charitable use. Could this be considered a question of planning? He thought that development charge had nothing whatever to do with planning, but was simply an indirect form of taxation. [20th July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Local Government Boundary Commission (Dissolution) Bill [H.C.] [18th July.

To dissolve the Local Government Boundary Commission and repeal the Local Government (Boundary Commission) Act, 1945; and to make consequential provisions as respects certain enactments of the Local Government Act, 1933, which were amended or repealed by the said Act of 1945.

Read Second Time:—

National Insurance Bill [H.C.] [20th July.

Rhodesia Railways Limited (Pension Schemes and Contracts) Bill [H.L.] [22nd July.

Read Third Time:—

Dover Harbour Bill [H.L.] [21st July.
Falmouth Docks Bill [H.L.] [21st July.
Huddersfield Corporation Bill [H.C.] [22nd July.
Isle of Man (Customs) Bill [H.C.] [22nd July.
Manchester Ship Canal Bill [H.L.] [21st July.
National Insurance Bill [H.C.] [21st July.
National Parks and Access to the Countryside Bill [H.C.] [21st July.
Patents and Designs Bill [H.L.] [22nd July.
Rochdale Canal Bill [H.L.] [20th July.
Royal Holloway College Bill [H.L.] [18th July.

. B. QUESTIONS

The SOLICITOR-GENERAL stated that since 1st January, 1948, 2,355 justices of the peace had attended refresher courses at Ashridge and other centres. Mr. SKINNARD asked whether that meant that all newly appointed justices now, as a regular practice, took the course ?

Sir Frank Soskice replied that the present courses were run by the Magistrates' Association, a purely private body over which the Lord Chancellor, as such, had no control. Under the terms of the Justices of the Peace Bill there was provision for the establishment of Magistrates' Courts Committees, which the Lord Chancellor would ask to prepare schemes for centres in order to implement the recommendations in that behalf of the Royal Commission on Justices of the Peace. The Lord Chancellor's present view was that justices should not be required to attend such courses compulsorily, but he would certainly urge them to do so. [18th July.

The PRIME MINISTER said it was not an appropriate time to appoint a Royal Commission to inquire into the present state of the divorce law. [20th July.

Mr. CHUTER EDE stated that all persons born before the commencement of the British Nationality Act, 1948, on 1st January, 1949, in India, Pakistan and Ceylon were British subjects under the Act and need take no steps to retain that status. The nationality of persons born in Burma before Burma became an independent country on 4th January, 1948, was governed by the Burma Independence Act, 1947. [21st July.

Mr. HAROLD WILSON stated that he was prepared to consider sympathetically claims for early payment of Pt. II War Damage claims if there were good reasons of undue hardship, and he would be willing to consider the case of limited companies whose final liquidation was held up pending the settlement of war damage claims, with consequent hardship and inconvenience to shareholders. [21st July.

STATUTORY INSTRUMENTS

Act of Sederunt (Transferred Functions of the Railway and Canal Commission), 1949. (S.I. 1949 No. 1320.)
Agriculture (Artificial Insemination) (Financial Matters) (Scotland) Regulations, 1949. (S.I. 1949 No. 1319.)
Air Navigation (National Air Races, Birmingham (Elmdon) Airport) Regulations, 1949. (S.I. 1949 No. 1339.)
Consular and Marriage Fees Regulations, 1949. (S.I. 1949 No. 1301.)
Control of Matches (Revocation) Order, 1949. (S.I. 1949 No. 1337.)
County of Dumfries (Euchan) Water Order, 1949. (S.I. 1949 No. 1304.)
Draft **Double Taxation Relief** (Taxes on Income) (Basutoland) Order, 1949.
Draft Double Taxation Relief (Taxes on Income) (Bechuanaland Protectorate) Order, 1949.
Draft Double Taxation Relief (Taxes on Income) (Swaziland) Order, 1949.
East Lothian Water Board (Whiteadder) Water Order, 1949. (S.I. 1949 No. 1305.)
Fats, Cheese and Tea (Rationing) (Amendment No. 4) Order, 1949. (S.I. 1949 No. 1325.)
Food (Points Rationing) (Amendment No. 5) Order, 1949. (S.I. 1949 No. 1326.)
Draft **House of Commons** (Redistribution of Seats) Order, 1949.
Draft House of Commons (Redistribution of Seats) (No. 2) Order, 1949.
Draft House of Commons (Redistribution of Seats) (No. 3) Order, 1949.
Live Poultry (Regulation of Sales, Exhibitions and Movements) Order, 1949. (S.I. 1949 No. 1335.)
London Traffic (Prescribed Routes) (No. 17) Regulations, 1949. (S.I. 1949 No. 1323.)
Meat Products and Canned Meat (Amendment No. 2) Order, 1949. (S.I. 1949 No. 1303.)
Mechanically Propelled Vehicles (Termination of Emergency Provisions) Order, 1949. (S.I. 1949 No. 1237.)

This Order fixes 12th July, 1949, as the date on which the privilege afforded members of the Forces and the Merchant Navy to drive without an excise licence whilst on leave is to terminate. It also fixes 30th June, 1950, as the end of the period in which a reduced rate of duty on agricultural vehicles is payable under s. 9 of the Finance Act, 1940, and s. 8 of the Finance Act, 1943.

Police Pensions Regulations, 1949. (S.I. 1949 No. 1241.)
Probation Rules, 1949. (S.I. 1949 No. 1328.)
Representation of the People (Northern Ireland) (No. 2) Regulations, 1949.
Retention of Main Under Highways (Gloucestershire) (No. 1) Order, 1949. (S.I. 1949 No. 1307.)
Road Vehicles and Drivers Order, 1949. (S.I. 1949 No. 1324.)
Runcorn District Water Board Order, 1949. (S.I. 1949 No. 1317.)
Sleaford Water Order, 1949. (S.I. 1949 No. 1331.)
Suffolk and Ipswich Fire Services (Combination) Order, 1949. (S.I. 1949 No. 1329.)
Superannuation (Approved Employment) Rules, 1949. (S.I. 1949 No. 1327.)
Superannuation (Public Offices) Rules, 1949. (S.I. 1949 No. 1332.)
Threshing Order, 1949. (S.I. 1949 No. 1344.)
Town and Country Planning (Isles of Scilly) Order, 1949. (S.I. 1949 No. 1321.)
Town and Country Planning (Minerals) (Scotland) Regulations, 1949.
Utility Cloth and Utility Household Textiles (Maximum Prices) Order, 1949. (S.I. 1949 No. 1311.)
Wild Birds Protection (Carmarthenshire) Order, 1949. (S.I. 1949 No. 1330.)

PARLIAMENTARY PUBLICATIONS

Return of Offences relating to Motor Vehicles, etc., during 1948. (House of Commons Paper, Session 1948–9, No. 202.)

This return gives the number of motoring offences committed, the number of persons prosecuted, and the results of the proceedings. The total number of alleged offences was 358,787 ; the number of convictions was 244,354 ; of these 243,681 were dealt with by fine and the total amount collected in fines (excluding costs) was £366,991.

Limitation of Actions. Report of the Committee under the chairmanship of Lord Justice Tucker. (Command Papers, Session 1948–9, No. 7740.)

Briefly, this report recommends that the Public Authorities Protection Acts be repealed ; that two years be the time limit in case of personal injuries with discretion in the court to extend it up to six years ; that other tortious actions and contractual actions be subject to a six year limit as at present ; that actions against the Crown and against the corporations of nationalised industries should be subject to the same time limits as applicable to other public authorities and to private individuals ; and, finally, that the time limit under the Fatal Accidents Act, 1846, should be two years from the date of death of the deceased, dependants to have the same right to apply for an extension of time as he himself would have had.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. HENRY CECIL LEON, M.C., to be a Judge of County Courts following the retirement on 31st August of Judge Earengey, K.C. The following arrangements will then take effect on 1st September : Judge BLAGDEN to be Judge of Clerkenwell County Court ; Judge RAWLINS to be one of the Judges of Circuit 37 (West London, etc.) and additional Judge at Bow and Marylebone, Judge LEON to be one of the judges of Circuit 34 (Brentford and Uxbridge) and additional Judge at Windsor.

Mr. W. A. L. RAEBURN, K.C., has been appointed Recorder of West Ham in succession to Mr. J. P. EDDY, K.C., who has been appointed Stipendiary Magistrate of East and West Ham.

Mr. A. A. WATSON, K.C., has been appointed Recorder of Colchester in succession to Mr. R. H. BLUNDELL, who has been appointed a Metropolitan Magistrate.

Mr. ALAN BENNETT has been appointed clerk to Biggleswade Urban District Council in succession to the late Mr. P. R. Chaundler.

Mr. J. E. R. CARSON, LL.B., deputy town clerk of West Hartlepool County Borough, has been appointed clerk of the Cardiganshire County Council.

Mr. E. W. JARMAN has been appointed solicitor to Epping Rural Council.

Mr. R. D. MARTEN, solicitor, of Croydon, has been appointed a justice of the peace for Croydon.

Mr. A. ROTHWELL has been appointed clerk to Langport Rural District Council in succession to Mr. F. C. P. Avis, who is retiring after forty-three year' service as clerk and assistant clerk.

Mr. G. F. SIMMONDS, M.A., LL.B. (Cantab.), Town Clerk of Rochdale, has been appointed Town Clerk of Bedford.

The Colonial Office announces the following appointments: Mr. M. C. E. P. BIRON, Resident Magistrate, Tanganyika; Mr. E. M. E. WALTHER, Crown Counsel, Uganda; Mr. J. BENNETT, Magistrate, Nigeria; Mr. D. H. HUGHES, Administrator General, Uganda; Mr. J. L. MACDUFF, Chief Magistrate, Fiji; Mr. W. E. JACOBS, Magistrate, St. Christopher, Nevis.

The following have been appointed members of the Commission on Church and State, set up by the Church Assembly under a resolution passed at the Spring Session, 1949, on the motion of the Earl of Selborne "to draw up resolutions on changes desirable in the relationship between Church and State and to present them to the Assembly for consideration at an early date": Sir WALTER MOBERLEY, G.B.E., K.C.B., D.S.O. (Chairman); the Right Rev. G. A. CHASE, M.C., D.D., Lord Bishop of Ripon; the Right Rev. R. C. MORTIMER, D.D., Lord Bishop of Exeter; the Very Rev. E. G. SELWYN, D.D., Dean of Winchester; the Rev. Professor NORMAN SYKES, D.Phil., Dixie Professor of Ecclesiastical History in the University of Cambridge; the Rev. L. M. CHARLES-EDWARDS, Vicar of St. Martin-in-the-Fields; the Right Hon. the EARL OF SELBORNE, C.H., P.C.; the Hon. Mr. Justice VAISEY, D.C.L.; Mr. ERIC FLETCHER, LL.D., M.P.; the Hon. LANCELOT W. JOYNSON-HICKS, M.P.

Personal Notes

Mr. David Blair, solicitor of Dunfermline, who celebrated his ninetieth birthday on 10th July, is still practising.

Mr. H. Darlow, O.B.E., B.A., LL.M. (Cantab.), retiring Town Clerk of Bedford, is to be given the honorary freedom of the Borough at a special meeting of the Town Council on 12th October.

Mr. Ernest W. Goodale, C.B.E., M.C., solicitor and managing director of a firm of silk weavers and furnishing fabric manufacturers, has been elected chairman of the Royal Society of Arts for the session 1949–1950.

Mr. Peter H. Jackson, LL.B., senior assistant solicitor to Burton Corporation, is to go into private practice in Northern Rhodesia.

Mr. D. W. Yates, solicitor, of Hyde, has been appointed honorary solicitor to the Ashton and District Grocers' Association.

Miscellaneous

At the Preliminary Examination of The Law Society held on 6th and 7th July, twenty-eight of seventy-three candidates were successful.

Double Taxation Agreements have been concluded between the United Kingdom and the High Commission Territories of Basutoland, the Bechuanaland Protectorate and Swaziland. The arrangements have been published as Schedules to Draft Orders in Council and follow the same pattern as agreements previously made with a number of Colonies. They are expressed to take effect for the current year.

PROCEEDINGS UNDER THE SOLICITORS ACTS, 1932 TO 1941

The Disciplinary Committee constituted under the Solicitors Acts made the following Orders on 15th July: that WILLIAM REGINALD BATTY, of Albert Square, Manchester, be fined £25, forfeit to His Majesty, and that he should pay to the complainant his costs of and incidental to the application and enquiry; and that HAROLD MORRIS, of King Street, Farnworth, Lancs, be fined £25, forfeit to His Majesty, and that he should pay to the complainant his costs of and incidental to the application and enquiry.

SOCIETIES

Mr. W. Whittle, solicitor and clerk to the Colne and Nelson magistrates, succeeds Mr. G. S. Ritchie as president of the BURNLEY AND DISTRICT INCORPORATED LAW SOCIETY. Mr. H. G. W. Cooper remains hon. secretary and Mr. J. O. R. Illingworth hon. treasurer.

The annual general meeting of the GLOUCESTERSHIRE AND WILTSHIRE INCORPORATED LAW SOCIETY was held at the Town Hall, Chippenham, on 13th July, 1949, Mr. H. A. Badham (Tewkesbury) presiding. The reports of committees and the accounts and balance sheet were approved. It was reported that the membership of the Society was 192 and that of this number 187 members were also members of The Law Society. Mr. S. W. H. Dann (Chippenham) was appointed President and Mr. P. J. Bretherton (Gloucester) Vice-President for the ensuing year. A grant of £26 5s. was made to the Solicitors Benevolent Association.

The fifty-seventh annual meeting of the HAMPSHIRE INCORPORATED LAW SOCIETY was held recently at Southampton. Mr. C. F. Hiscock (Southampton) was elected President for the ensuing year, and Mr. S. P. Roberts (Portsmouth) Vice-President. Messrs. A. W. N. Addison, D. H. B. Harfield and A. N. MacKean were re-elected to the committee and Mr. L. L. Pilkington (Portsmouth) was elected a new member. Mr. L. F. Paris was re-elected hon. secretary and treasurer and Mr. C. G. A. Paris assistant hon. secretary. The President gave a very interesting address on the licensing laws.

The annual dinner was held the same evening. Among the guests were Mr. Justice Hallett, Mr. Justice Jones, Mr. Justice Pierce, His Honour Judge Tyler, K.C., Mr. Nevil Smart (President of The Law Society), Mr. T. G. Lund (Secretary of The Law Society) and the Hon. E. E. S. Montagu, O.B.E., K.C.

During the course of the evening, the President presented to Mr. J. S. C. G. Gurney-Champion the law books representing the prize which had been awarded to him by the trustees under the Ford Trust, he having obtained the highest place in The Law Society Honours Examination from among the clerks articled in Hampshire and the Isle of Wight. Mr. Gurney-Champion had also been awarded the Sheffield Prize by The Law Society for the best Final paper at The Law Society's March Examinations.

The July meeting of the Board of Directors of the LAW ASSOCIATION was held on 4th July at The Law Society's Hall. Three grants to non-members' cases were renewed, an emergency grant to a new non-member's case was approved and three holiday grants of £10 each were made to beneficiaries having dependent children. Seven new annual subscribers were admitted to membership. Membership is open to all London practising solicitors and to retired solicitors who have practised under London certificates. Membership carries with it, among other privileges, the right to recommend needy and deserving cases. Full particulars may be obtained from the Secretary, 25 Queensmore Road, Wimbledon Park, S.W.19 (Tel.: Wimbledon 4107).

At the July meeting of the Board of Directors of the SOLICITORS' BENEVOLENT ASSOCIATION, held on 6th July, fifty-six solicitors were admitted to membership, bringing the Association's total membership to 7,440. £3,084 was distributed in relief to thirty-four beneficiaries. Miss A. H. Smith has been appointed secretary to the Association in the place of Miss K. Passmore, who has resigned for health reasons. All solicitors on the Roll for England and Wales are eligible for membership and are asked to write to the Secretary, 12 Clifford's Inn, Fleet Street, E.C.4, for further information. The minimum annual subscription is £1 1s., life membership subscription £10 10s.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88-90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).